

# S.C. Real Estate Commission News



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## COMMISSION MEETINGS

The regularly scheduled meetings of the South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission, are held at 10 a.m. on the third Wednesday of each month at the Commission offices. These meetings are open to the public. Dates are subject to change.



South Carolina Department of Labor,  
Licensing and Regulation

## Meet the New Administrator



On October 1, 2004 John Robert "Jay" Pitts assumed the position of administrator of the South Carolina Real Estate Commission.

Pitts was previously administrator of the Engineers and Land Surveyors Board, a position he held from 1998 until assuming his new position. From 1990 to 1998, he was Director of Alumni Relations and Special Events at the College of Engineering at the University of South Carolina where he graduated in 1984 with a bachelor of arts in political science.

On turning over the reins, Bob Selman said "Jay is an experienced and seasoned administrator with the necessary vision, organizational and people skills and energy to further the goals and effectiveness of the Real Estate Commission."

## What About Bob?

With the announcement that Jay Pitts has assumed the duties of administrator of the Real Estate Commission and the Real Estate Appraisers' Board, many in the industry have asked where does this leave Bob Selman?

"I'm not going anywhere," Selman said. "The real estate industry will have the same relationship and connection with the agency through me that they have had since I came to the Department of LLR. I'll be working closely with Jay, sharing what I know about the industry and helping him make contacts."

Pitts is looking forward to assuming his new responsibilities, and he considers Selman a super mentor. "I have had the honor and privilege of working with Bob for the past six years," he said. "There is so much to be learned from him. What a great resource! I look forward to learning as much from him as I possibly can, not to mention the challenges, opportunities and continuing his legacy."

Evelyn Young, Real Estate Commission chairperson, said the Commission has been blessed to have someone of Selman's talent and experience as administrator. "He has developed a department that has made a great contribution to the licensees and the public, a department of knowledge and integrity that makes us all proud," she said. "The good news is that he will still be in the background for all of us to draw upon his knowledge and experience, and this will make for a smooth transition. We all owe Bob a great big 'Thank You.'"

Selman was named administrator of the state Real Estate Commission in 1994 following a career of 33 years in real estate with the Keenan Company in Columbia. He retired from the firm as president in 1993.

Upon assuming his duties at the Real Estate Commission, his immediate task was to restore respect to an agency that was the subject of an FBI investigation. He immedi-

—continued on page 7

# License Law Changes Aspects of Real Estate Practice Act

Changes in the South Carolina Real Estate License Law enacted by the 2004 session of the Legislature go into effect January 1, 2005. Many of these changes affect the process of disclosing agency relationships. Regardless of the changes in the law, the purpose of agency disclosure has not been altered. The purpose of disclosing agency relationships to buyers and sellers is to educate them about agency relationships in real estate. The information provided should be accurate and useful in helping consumers understand the differences between becoming a client or remaining a customer. In order to make an informed decision, the consumer should be told about the services received if he or she becomes a client and the services received if he or she remains a customer.

Sections 40-57-139 (A) and (E) require that licensees provide, *at the first practical opportunity* to all buyers and sellers with whom they have substantive contact, a meaningful explanation of agency relationships in real estate transactions that are offered by that licensee's company. The licensee must also provide the Agency Disclosure Brochure regarding agency relationships. The law and the brochure make it clear that the potential buyer or seller is to be treated initially as a customer and the licensee must only offer customer services unless and until the potential buyer or seller requests representation as a client and subsequently he or she enters into a representation agreement with the brokerage.

There are two differences between the old and new law regarding the disclosure. First, the 'bright-line' definition of substantive contact has been dimmed. No longer can one say: "I can't show a property or ask qualifying questions before giving the agency disclosure." The licensee now has more freedom in the timing of the disclosure. More freedom usually means more responsibility and the best policy will still be to disclose early—before the buyer or seller gives damaging personal information. Common sense suggests that you should disclose before someone gives you any information that hurts the negotiating position. For example, buyers who choose to be customers should be told of the licensee's disclosure to the seller client before they told you how much they "loved the property" or that they "would pay more if necessary."

Section 40-57-139 (F) says if first contact occurs over the telephone or by other electronic means, a licensee shall provide to a buyer the agency disclosure brochure then at first substantive contact or send a copy of the brochure by electronic means including the Internet or e-mail.

Another difference between the old and new law is that the licensee no longer is required to explain all types of permissible agency relationships. Beginning January 1, explanation of only the types of agency relationships that are offered by the licensee's company is required.

The new Agency Disclosure Brochure regarding agency relationships does NOT have a place for the consumer to sign. The brochure tells consumers that they are

starting off as a customer and explains that the only way they can become a client is to enter into a written agency agreement with the real estate company with which the associated licensee is affiliated. The brochure lists certain basic duties the licensee will perform when dealing with a customer and the additional duties that will be performed when the consumer becomes a client. Section 40-57-139 (G) also makes it clear that no agency relationship is created unless it is agreed to in writing by the seller or buyer and the real estate company.

When a seller signs a listing agreement and when a buyer signs a buyer's representation agreement, he or she becomes a client of the real estate company, and Section 40-57-139 (B) and (C) require these agency agreements to contain an acknowledgement of receipt of the Agency Disclosure Brochure. Therefore, when the consumer chooses client-level representation, there is written evidence that the agency disclosure was given.

Because the license law no longer requires a signature on the disclosure brochure, you should be aware that when the consumer remains a customer, you have no tangible evidence that the brochure and the disclosure have been given to the consumer. Acknowledgement of the receipt of the Agency Disclosure Brochure could be added to any purchase and sales agreement in order to reduce risk.

Section 40-57-137 (M) deals with disclosed dual agency. One of the fundamental differences in the new

## Commission Elects Officers

At the Commission's September meeting, Evelyn K. Young, Fourth Congressional District, was re-elected chairman and Jay Keenan, At-large member, was re-elected vice chairman. Steven Sloop, Second Congressional District, was re-elected secretary. All terms are for one-year.

## License Law Changes Aspects of Real Estate Practice Act - Continued

statute is that it treats separate offices in the same company as different companies as long as there is a different broker-in-charge in each office. Also, in Section 40-57-140 (C) a former client of one office in a company may be treated as either a customer or a client of another office in the same company provided there is a separate broker-in-charge for each office.

Section 40-57-137 (P) offers the possibility of designated agency as a new choice for South Carolina brokers. In order to offer designated agency to clients, the broker-in-charge must adopt a policy that contains provisions to ensure that each client is adequately represented in accordance with the law regarding designated agency. In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of both the seller client and the buyer client. Designated agents are not limited by the company's agency relationship with the other client, but instead have a duty to promote the best interest of the client they are designated to represent, including timely advice and negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. All other associated licensees are also considered to be dual agents and should not be involved with either client during the transaction. No dual agency agreement form is required but consent for the broker-in-charge to be a dual agent must be contained in the Designated Agency Agreement.

If a company's policy allows disclosed dual agency and/or designated agency, associated licensees of the company should discuss that fact with a prospective seller or buyer before asking them to sign an agency agreement. Both the Buyer's Representation Agreement and the Listing Contract must provide a place for each respective client to indicate their agreement to consider allowing the company to become a dual agent or their agreement for the broker-in-charge to designate representative agents should the situation arise. The required language for the clients to indicate their agreement is provided by the Commission. Consent to practice dual agency or designated agency must be evidenced by a Dual Agency Agreement or a Designated Agency Agreement, respectively. Both of these agreements are person and property specific and either agreement must be signed by the buyer before the offer written and signed by the seller before signing the sales contract. The Designated Agency Agreement must contain the name of the broker-in-charge and each associated licensee who is named to represent the interest of the buyer client and seller client.

The Commission has created for use by licensees the only authorized Dual Agency Agreement and Designated Agency Agreement. These two agreements along with the Agency Disclosure Brochure and the language required for insertion into the agreement seeking permission for dual and/or designated agency are available on the Commission's website <http://www.llr.state.sc.us/POL/RealEstateCommission/>. They must be

used with no language alteration permitted.

The agency disclosure requirements of the license law do not apply in the three specific situations below. These, however, do not necessarily apply to the common law of agency.

1. Transactions involving rentals or leases of residential or commercial property
2. When the communication from the licensee is a solicitation of business
3. The transaction is regarding the sale of property by auction

Other changes which do not involve agency are as follows:

1. Licensees receiving a check as an escrow or security deposit in sales contracts or lease agreements no longer must turn it over to their BIC or PMIC immediately but may hold the check until the contract or lease is ratified by all parties.
2. Licensees may form a corporation for the purpose of receiving compensation from their broker. All principals in the corporation must be licensed under the same broker-in-charge.
3. Paying a commission as compensation to unlicensed individuals, including rebating clients, is not allowed under the new law. There is a new list of prohibited activities of unlicensed assistants.

Be sure and familiarize yourself with these and the other license law changes by downloading the new license law from:

<http://www.llr.state.sc.us/POL/RealEstateCommission>



### Visit Us On The Net!

Got a minute? Visit us on the net at [www.llr.state.sc.us/POL/RealEstateCommission](http://www.llr.state.sc.us/POL/RealEstateCommission).

The page includes a history of the Commission, a listing of current board members, licensure requirements, forms and applications, back issues of the newsletter, and much, much more.

If you have any comments or suggestions, email Ann Parris, [parrisa@llr.sc.gov](mailto:parrisa@llr.sc.gov)

# Frequently Asked Questions Regarding Changes To The Law

Amendments to The Code of Laws for real estate for South Carolina will become effective January 1, 2005. During the month of November, the South Carolina Real Estate Commission held workshops throughout the state to educate licensees about the changes in the law. The following questions were the most commonly asked during these sessions.

1. What is meant by 'first practical opportunity'?

One way to understand 'first practical opportunity' would be to contrast it with 'ideal opportunity'. It may be 'ideal' to disclose agency before any possibility of confidential information could be shared; however, it is not always practical to do that. It means the first opportunity in which disclosure can be accomplished without major inconvenience.

2. What does "substantive contact" mean?

Substantive contact means contact in which there is discussion and/or dialog between the consumer and the associated licensee which has moved from casual introductory small talk and pleasantries to a meaty conversation in which the consumer's needs and wants regarding the sale or purchase of real estate is the topic.

3. How can I protect myself from a consumer who says that he or she did not receive the brochure?

The consumer who becomes a client will have a place on the agency agreements to acknowledge receipt of the disclosure and the brochure. The Commission has issued required language to be used for this purpose. With the consumer who chooses to remain a customer, the broker will have to devise a plan to document acknowledgement for the file. Some standard form purchase agreements will have the language to provide the proof.

4. Is designated agency a type of dual agency?

Technically, the broker-in-charge and all associated licensees in the office will be dual agents. However, the associated licensees who are designated to represent the respective interests of the buyer and seller clients can represent the clients without the normal restrictions of dual agency.

5. When do buyers or sellers sign the dual agency or designated agency consent agreement?

There will be statements concerning permission to ask permission on each agency agreement. Assuming the affirmative statement concerning the permission to ask, the actual agreement must be signed by the buyer before the offer is written and by the seller before the seller accepts the offer.

6. How will the BIC decide whom to designate?

The BIC must have written policy on many aspects of designated agency before offering this choice to the public. Having said that, the most likely choice to represent the seller will be the listing associated licensee and the most likely choice to represent the buyer will be the associated licensee who got the buyer to sign up as a client.

7. Can a licensee be a dual agent and a designated agent at the same time?

Technically it could happen. Whether it would be permitted in a particular company would depend on the BIC's policy. For example, if an associated licensee brought in a buyer client who became interested in a listing that was obtained by the same licensee, it would require dual agency. And if, during the same time-frame, another associated licensee in the company brought in a buyer client who is interested in that same listing, each licensee could be designated to represent the respective clients in designated agency. This type of situation requires a considerable amount of care and close attention to the BIC's policy.

8. Did the removal of imputed knowledge release the BIC from the liability of the actions of a subagent?

NO!

9. Is a "bird dog fee" or a referral fee to an unlicensed individual legal under the new law?

No, the new law does not equivocate. It is a specific violation of the license law to pay an unlicensed person.

10. Do I have to tell a consumer about convicted sex offenders living in the neighborhood?

Yes, but only if you knew it. You are not required to discover the information. You must, however, tell what you know if you are directly asked.

11. Does the new Agency Disclosure Brochure replace our current agency disclosure document?

Yes, it does. After the end of 2004, the old form should not be used any longer.

## Flood Information Available

Lexington County as a participant in the National Flood Insurance Community Rating System offers flood information and map determinations for property located in the unincorporated area of Lexington County. Flood information can also be obtained at the Web site: [www.lex-co.com](http://www.lex-co.com) under the GIS property, mapping and data link.

Property owners who are required to purchase flood insurance receive a discount on their premiums because of the County's participation in the Community Rating System.

For more information or assistance contact Christopher Stone in the Lexington County Stormwater Management Department at 803-359-8121.

# Licensee Status and Renewal Information Online

To verify your license status or another licensee's status online, go to <http://lookup.llronline.com/> and select the Real Estate option from the drop down box. You can search by name, license number, city, company name, etc. Each June, the Real Estate Commission renews about half of the real estate licensees who hold a South Carolina license. The Commission suggests that in May you verify your license expiration date and status to make sure it is correct. By performing this simple and brief task, you will know when it is time to renew your license. If it is time for you to renew, you can go to our online renewal website and accomplish the task; however, the Commission will continue to mail renewal notices. Renewals will start in

early May of each year. The site is <http://renewals.llronline.com>

Renewing online may assist you in avoiding late fees and even having your license lapse, which would require you to take the examination again to reclaim an active license. The Commission staff has attempted to make this a quick and easy process. The turnaround time for receiving your license is extremely quick. Each morning all transactions that were completed online the day and evening before will be processed. The license is then printed and placed in the mail. All you need is a MasterCard or Visa and your user-id and password. There is a processing fee of \$1.25 for renewing online. If you have misplaced your user-id and password, the website [http://](http://renewals.llronline.com)

[renewals.llronline.com](http://renewals.llronline.com) will provide this information to you. Once you select the START LOGIN PROCESS, there is an option to click and retrieve your user-id and password. When you enter your social security number and e-mail address, your user-id and password will be e-mailed to you.

The staff hopes that through "word of mouth" more licensees will use this process. Use of the online renewal option allows staff the opportunity to provide better customer service to individuals with complex transactions or issues. If you need any assistance, please call the office and the licensing department will assist you.

## Commission Provides "Law Online" for Licensees

Amendments to the Code of Laws for real estate for South Carolina will become effective January 1, 2005. During the month of November, the South Carolina Real Estate Commission held workshops throughout the state to educate licensees about the changes in the law.

Over 1,000 people attended the workshops, which were taught by Doug Schmidt.

Doug has over 32 years of real estate experience and is a licensed broker in over six states. He teaches many courses including agency, ethics, finance, negotiating and real estate law, just to mention a few.

If you were unable to attend one of the seminars, the Commission is providing the information in an online version called "Law Online." To view "Law Online," go to [www.llr.state.sc.us/POL/RealEstateCommission/](http://www.llr.state.sc.us/POL/RealEstateCommission/) for a complete power point presentation explaining the changes along with the agency disclosure brochure and the necessary forms. In addition, a complete two-hour video streaming of the workshop given by Mr. Schmidt is also available online.

We encourage each of our licensees to go online and review the changes to the law.

## Commission Welcomes Two New Members

R. Scott Moseley, Irmo, has been appointed by Governor Sanford as a Public Member of the South Carolina Real Estate Commission. Moseley is President of the Irmo Insurance Agency, Inc. He is a graduate of Lees-McRae College and the University of South Carolina. He is a past president of the Lake Murray-Irmo Rotary Club and a board member of Independent Insurance Agents and Brokers of South Carolina.

Tony K. Cox, Myrtle Beach, has been appointed as the member from the First Congressional District. Cox is Chief Real Estate Officer with Burroughs & Chapin in Myrtle Beach. He is a graduate of the University of South Carolina and has been licensed since 1980. He is a past president of the Grand Strand Board of REALTORS, 2000 REALTOR of the Year, and the SC Association of REALTORS 2001 Legislative Grassroots REALTOR of the Year. He holds the CCIM, GRI, and e-Pro designations.

## Printed News Out.... E-News in!



As the technological age continues to grow and evolve, the Real Estate Commission is constantly changing in order to find the most expedient, efficient and creative way to conduct business. With that in mind, this will be the last printed version of the *S.C. Real Estate Commission News*.

The Commission is creating an electronic version of the newsletter. The online newsletter will provide staff a way to post priority information quickly and efficiently as well as offer easier and more frequent access to licensees. This will also save money in printing and mailing costs and will allow the Commission a venue to communicate additional information from other sources that affect the profession. The electronic version posted on our website will give you up-to-date changes in policies and procedures, renewals, current news, and disciplinary actions, including final written orders.

The real estate profession is very forward thinking and proactive in using information technology, so the conversion to an online newsletter makes sense. This change will allow the Commission to maintain a high standard of customer service to licensees.



# DISCIPLINARY ACTIONS

## Hearings

Linda S. Haynie, Salesman  
Inactive Status  
For failing, within a reasonable time, to account for money belonging to others.  
By Order of the Commission: \$3,000 fine.

Fred A. Schmitz, BIC  
Avalon Rentals & Sales  
Hilton Head Island, SC  
For failing to execute a management agreement having a definite expiration date, for failing to properly manage his real estate trust account and for failing, within a reasonable time, to account for rental fees coming into his possession.  
By Order of the Commission: \$3,000 fine, provide the Commission an accounting of his records, and five years probation with special conditions that he complete a trust account course and provide the Commission with an accounting of his records semi-annually.

## Consent Agreements

Benjamin B. Bryson, BIC  
Bryson Properties  
Charleston, SC  
For failing to deliver an offer to his seller client.  
By Consent: Reprimand and a \$500 fine.

Gerald M. Candler, Broker  
Inactive Status  
For being convicted of a Federal crime that is required to be reported to the Commission.  
By Consent: License suspension to run concurrent with Federal confinement, then probation to run concurrent with Federal probation.

Daphne Carter, Salesman  
Century 21 McDaniel & McDaniel  
Columbia, SC  
For cashing a buyer client's escrow deposit return by forging the client's name and retaining the proceeds.  
By Consent: Reprimand and indefinite license suspension.

John A. Clayton, BIC  
Country Manner Realty  
Conway, SC  
For failing to provide a written agency disclosure on two real estate transactions.  
By Consent: Public reprimand and a \$300 fine with \$200 stayed if course on agency relationships is completed within 60 days.

Jo Z. Dietrich, PMIC  
Charleston Property Management, Inc.  
Charleston, SC  
For failing to renew her license and for assuming the duties of property manager in charge of a company with a trust account shortage.  
By Consent: Indefinite license suspension stayed to three years' probation with special conditions that the trust account shortage be satisfied within 30 days, proof to the Commission within 60 days that a new trust account software package is in place and operating, completion of a pre-licensing property manager's course and submission semi-annually of a trust account reconciliation by a licensed certified public accountant.

Elsie Gawrys, PMIC  
Real Estate, Inc.  
Columbia, SC  
For failing to remit on a timely basis, monies belonging to others and for a trust account shortage in excess of \$15,000.  
By Consent: Voluntary surrender of her license and associated qualifications.

Luanne C. Marsee, Salesman  
Re/Max Foothills Realty  
Anderson, SC  
For failing to disclose in writing in a real estate transaction the fact that the purchasers were her brother and sister-in-law.  
By Consent: Reprimand and a \$600 fine with \$300 stayed upon completion of an ethics course within 30 days.

Eugene G. McDonald, III, Salesman  
Home Shop Realty  
Columbia, SC  
For failing to make all relevant facts in a real estate transaction known to the buyers. Respondent was the owner/seller of the home.  
By Consent: Reprimand and indefinite license suspension stayed upon proof to the Commission that the Respondent has complied with an order of the Circuit Court to repurchase the home.

Kemp C. "Swami" Nash, BIC  
C21, Coastal Carolina Properties, Inc.  
North Myrtle Beach, SC  
For releasing disputed earnest money to his buyer although Respondent did replace the earnest money using his own funds.  
By Consent: Reprimand

Anna M. Powell, Salesman  
Re/Max Real Estate Services  
Columbia, SC  
For failing to pay the sellers \$1,000 if the home was not sold within 60 days as advertised on her web site.  
By Consent: Reprimand, required to pay the sellers as advertised and requirement to change advertising to clearly define any disclaimers on the program to encourage listings by offering incentives.

continued next page



# DISCIPLINARY ACTIONS

Thomas W. Sharpe, Salesman  
C21 Bob Capes Realtors  
Columbia, SC

For, on at least two occasions, entering into a transaction in the name of a company with which Respondent was not licensed.  
By Consent: License suspension for 6 months stayed to 3 years' probation with special condition that the Respondent be reprimanded and pay a \$1,000 fine.

Christine M. Taylor, Salesman  
Condotels International, Inc.  
Myrtle Beach, SC

For being convicted of a Federal crime that is required to be reported to the Commission.  
By Consent: Reprimand and probation to run concurrent with Federal probation.

Thomas P. Taylor, BIC  
Condotels International, Inc.  
Myrtle Beach, SC

For being convicted of a Federal crime that is required to be reported to the Commission.  
By Consent: Reprimand and probation to run concurrent with Federal probation.

Lonnie J. Weedle, BIC  
Banker's Realty, Inc.  
Greer, SC

For inserting himself in a real estate transaction without creating an agency relationship, failing to clarify the disposition of the earnest money on the face of the contract and for retaining earnest money while considering it as a down payment.  
By Consent: Reprimand and license suspension stayed upon completion of a course on agency within 120 days and restitution to the buyer the total amount of \$14,000 tendered in the transaction.

## What About Bob? - Continued from page 1

ately accomplished that task and was later successful in modernizing the rules governing the practice of real estate in South Carolina.

"One of my favorite quotes from Bob, which he claims no credit for originating, but is consistent with his philosophy, is 'If you keep doing what you have always done, you will get what you have always gotten,'" said Ed Farnell, former Chief Investigator for the Real Estate Commission.

Soon after joining LLR, Selman was asked to take on additional duties as administrator of the State Real Estate Appraisers' Board. For the past five years, he has served as assistant deputy director at LLR for the Division of Professional and Occupational Licensing Boards. In that role, he has had responsibility for 10 boards, primarily building related. They include Architectural Examiners, Building Codes Council, Contractor's Licensing Board, Engineers and Land Surveyors, Environmental Certification, Manufactured Housing Board, Pyrotechnic Safety, Real Estate Appraiser's Board, Real Estate Commission and Residential Home Builders.

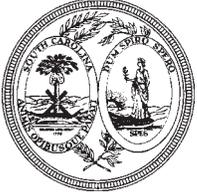
"Jay, as administrator of the Real Estate Commission and Real Estate Appraiser's Board, will report to me, just as the administrators of the other boards in our group do," he said.

Those who have worked for Selman praise his leadership and motivational skills. Ann Parris, Selman's executive assistant for the past 11 years, probably knows him as well as anyone.

"I still learn something new from him every day," she said. "He has wonderful people skills. He knows how to motivate people to make them want to do their very best work. He encourages his staff to be innovative, creative and to think 'outside of the box.' He is the kind of boss you do not ever want to disappoint."

Adrienne Youmans, director of the S.C. Department of Labor, Licensing and Regulation, said Selman is an integral part of the agency's senior management team.

"We affectionately call Bob the Godfather of LLR," she said. "He plays a key role in the development of programs and policies affecting all areas of the agency. His expertise will benefit the entire agency, and at the same time, he'll continue to be a resource for the real estate industry in our state."



SOUTH CAROLINA REAL ESTATE COMMISSION

## **S.C. REAL ESTATE COMMISSION NEWS**

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